UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

DANELLE SINCLAIR AS GUARDIAN AD LITEM FOR A. TUCKER AND O. TUCKER, AND ISABELLA TUCKER,

Plaintiffs,

vs.

TWITTER, INC., GOOGLE LLC, and FACEBOOK, INC.,

Defendants.

Case No: C 17-5710 SBA

ORDER PARTIALLY GRANTING DEFENDANTS' MOTION TO DISMISS

Dkt. 54

The instant action arises from the tragic death of Jared Tucker ("Decedent"), who was among a number of individuals killed in a horrific terrorist attack carried out by alleged ISIS member, Younes Abouyaaquob ("Abouyaaquob"), in Barcelona, Spain, on August 17, 2017. Plaintiffs, the children of the Decedent, bring the instant action against Defendants Twitter, Inc. ("Twitter"), Google LLC ("Google") and Facebook, Inc. ("Facebook"), all of which operate social media platforms allegedly used by ISIS to promote its agenda.

The operative pleading is the First Amended Complaint ("FAC"), which claims that Defendants provided material support to a terrorist organization in violation of the Antiterrorism Act of 1990 ("ATA"), Pub. L. No. 1-1-519, § 132, 104 Stat. 2240 (1990) (codified at 18 U.S.C. § 2333(a)), and aided and abetted and/or conspired with a person who committed an act of international terrorism in violation of the ATA, as amended by the Justice Against Sponsors of Terrorism Act ("JASTA"), Pub. L. No. 114-222, 130 Stat. 852

(2016) (codified as 18 U.S.C. § 2333(d)). The pleadings further allege state law claims for negligent infliction of emotional distress ("NIED") and wrongful death.

The parties are presently before the Court on Defendants' Motion to Dismiss First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6). Dkt. 54. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS the motion to dismiss as to Plaintiffs' federal claims, which are dismissed without leave to amend. The Court declines to assert supplemental jurisdiction over Plaintiffs' state law causes of action, which are dismissed without prejudice. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. BACKGROUND

A. FACTUAL SUMMARY[1]

On August 17, 2017, ISIS, a known terrorist organization, carried out numerous terrorist attacks across Spain, including one in Barcelona (the "Barcelona Attack"). FAC ¶ 347, Dkt. 50. The attack occurred at a popular tourist destination called La Rambla, which is a main thoroughfare in Barcelona. Id. ¶ 399-401. La Rambla is a two-way boulevard with a large pedestrian promenade located in the center of the roadway. Id. ¶ 400. There are a number of markets, bars, and restaurants on the promenade. Id.

At around 5:20 p.m. on August 17, 2017, Abouyaaqoub drove a large three-ton van down the pedestrian lane of La Rambla, increasing his speed and steering the vehicle in the dense crowd of people. Id. ¶ 399. Reaching speeds of up to 50 miles per hour, Abouyaaqoub maneuvered the van through the promenade, driving in zig-zag pattern to severely or fatally injure as many people as possible. Id. ¶ 402. In the space of 18 seconds, Abouyaaqoub killed 13 people, including the Decedent, and injured more than 100 others. Id. ¶ 404. After crashing the van into a newspaper kiosk, Abouyaaqoub exited the van and escaped into the crowd. Id. ¶ 405. He later commandeered a car, stabbed the driver to

[1] The following facts are taken from the FAC, which, for purposes of the instant motion, are taken as true.

death, and escaped. Id. ¶ 406. ISIS subsequently claimed responsibility for the attack, describing Abouyaaqoub and other "executors" of the attacks as "soldiers of the Islamic state." Id. ¶¶ 407-411.

According to Plaintiffs, Defendants are responsible for the Barcelona Attack by virtue of allowing ISIS to utilize their respective social media platforms to recruit, fund and encourage terrorist attacks. Id. ¶ 68, 152. For example, ISIS has launched campaigns on Twitter to raise funds to purchase weapons and ammunition. Id. ¶¶ 176, 178, 229. Similarly, ISIS has utilized YouTube (which is owned by Google) to generate support for its cause, to publicize its violent activities, to spread its propaganda, and as a means of instilling fear and terror in the public. Id. ¶¶ 23, 183, 190, 285, 309. Among other things, ISIS has used YouTube to disseminate videos and images of mass beheadings, burning captives alive and other barbaric activities. Id. ¶¶ 23. The pleadings do not allege that ISIS used social media to direct the Barcelona Attack. However, Plaintiffs claim that "Abouyaaqoub was radicalized by ISIS's use of social media" and thereafter carried out the attack. Id. ¶ 516.

B. PROCEDURAL HISTORY

Plaintiffs filed the instant action against Defendants on October 4, 2017. On December 12, 2017, the Court, upon stipulation of the parties, stayed the action pending the Ninth Circuit's resolution of Fields v. Twitter, Inc., 9th Cir. No. 16-17165. One of the issues in that appeal was the requisite showing of causation to sustain a claim under the ATA. Dkt. 33, 34. Fields held that a primary liability claim under the ATA requires a showing of a direct relationship between the defendant's conduct and the plaintiff's injury. 881 F.3d 739, 744 (9th Cir. 2018).[2] On March 20, 2018, the Ninth Circuit issued its mandate in Fields and the Court thereafter vacated the stay of the instant proceedings. Dkt. 33, 35.

[2] As will be discussed in more detail below, the ATA provides for primary or direct liability claims as well as secondary or indirect liability claims for providing substantial assistance and conspiracy.

On June 25, 2018, Plaintiffs filed a FAC, which alleges six federal claims and two supplemental state law causes of action, as follows: (1) aiding and abetting liability under the ATA, 18 U.S.C. § 2333(a), (d); (2) conspiracy under the ATA, id.; (3) provision of material support to terrorists, id. §§ 2339A, 2333(a); (4) provision of material support and resources to a designated foreign terrorist organization in violation of the ATA, id. §§ 2339B(a)(1), 2333(a); (5) NIED; (6) concealment of material support and resources to a designated foreign terrorist organization in violation of 18 U.S.C. §§ 2339C(c), 2333(a); (7) provision of funds, goods and services to or for the benefit of specially designated global terrorists in violation of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-1707, 31 C.F.R. Part 594, Executive Order 13224 and 18 U.S.C. 2333(a); and (8) wrongful death. FAC ¶¶ 523-569.

Defendants have now filed a motion to dismiss, pursuant to Rule 12(b)(6). In their motion, Defendants argue, inter alia, that Plaintiffs' ATA primary liability claims under section 2333(a) (Counts III, IV, VI and VII of the FAC) are infirm due to the lack of facts establishing proximate causation. As to the secondary liability claims for aiding and abetting (Count I) and conspiracy (Count II) under section 2333(d), Defendants argue that the pleadings fail to show the requisite assistance or agreement, respectively, to state a claim. Finally, Defendants assert that because Plaintiffs' primary liability claims fail, so too must Plaintiffs' state law causes of action for wrongful death and NIED. The motion has been fully briefed and is ripe for adjudication.

II. LEGAL STANDARD

Rule 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The

court is to "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899-900 (9th Cir. 2007). Where a complaint or claim is dismissed, leave to amend generally is granted, unless further amendment would be futile. Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1041 (9th Cir. 2011).

III. DISCUSSION

A. ATA CLAIMS

Enacted in 1992, the ATA imposes criminal liability for: providing material support to terrorists, 18 U.S.C. § 2339A; providing material support or resources to designated foreign terrorist organizations, id. § 2339B; and concealing material support or resources to designated foreign terrorist organizations, id. § 2339C. A violation of any of these criminal provisions "can provide the basis for a [civil] cause of action under [18 U.S.C.] § 2333(a)." Fields, 881 F.3d at 743. Section 2333(a) states that "[a]ny national of the United States injured in his or her person ... by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold ... damages." 18 U.S.C. § 2333(a). This provision creates what is commonly referred to as a primary or direct liability claim. Taamneh v. Twitter, Inc., 343 F. Supp. 3d 904, 910 (N.D. Cal. 2018) (citing Rothstein v. UBS AG, 708 F.3d 82, 97 (2d Cir. 2013)).

1. Primary Liability

To state a claim for primary liability under the ATA, a plaintiff must allege facts that plausibly demonstrate that the injury at issue was "*by reason of* an act of international terrorism…." 18 U.S.C. § 2333(a) (emphasis added). Here, Defendants argue that Plaintiffs' primary liability claims under the ATA must be dismissed for failure to sufficiently allege proximate causation consistent with Fields' direct relationship standard. Alternatively, they assert that Plaintiffs have not plausibly alleged that Defendants committed an "act of international terrorism" for purposes of demonstrating a violation of

the aforementioned criminal provisions of the ATA. The Court need only address the first argument, which is dispositive.

In Fields, an ISIS-affiliated terrorist, Anwar Abu Zaid ("Abu Zaid"), shot and killed two contractors, who were working at a police training facility in Jordan. The decedents' survivors sued Twitter under the ATA for providing material support to ISIS, which had claimed responsibility for the attack. In particular, they claimed that Twitter's direct-messaging feature allowed ISIS to: communicate with potential recruits; raise funds; facilitate its operations; post instructional and promotional videos; and spread propaganda and fear. Twitter moved to dismiss the action based on the plaintiffs' failure to adequately plead that they were injured "by reason of" Twitter's conduct. The district court granted the motion to dismiss, and the plaintiffs appealed.

On appeal, the Ninth Circuit addressed the contours of the phrase "by reason of an act of international terrorism," as used in section 2333(a). The plaintiffs argued that proximate causation under the ATA is established when a defendant's conduct is a "substantial factor in the sequence of responsible causation, and the injury at issue was reasonably foreseeable or anticipated as a natural consequence." Id. at 744. The court rejected the plaintiffs' argument. Citing Supreme Court authority interpreting the same "by reason of" causation language used in the Racketeer Influenced and Corrupt Organizations Act and antitrust statutes, the Ninth Circuit agreed with Twitter that the ATA imposes a "higher" showing of causation. Id. More specifically, "a plaintiff must show at least some *direct relationship* between the injuries that he or she suffered and the defendant's acts." Id. In other words, the plaintiffs had to "articulate a connection between Twitter's [conduct] … and [the plaintiffs'] injuries." Id. at 750. The panel concluded that the plaintiffs' primary liability claims were properly dismissed because the pleadings contained "no facts indicating that *Abu Zaid's attack* was in any way impacted, helped by, or the result of ISIS's presence on the social network." Id. (emphasis added).

Here, as in Fields, Plaintiffs fail to allege facts demonstrating a "direct relationship" between Defendants' conduct and Abouyaaqoub's terrorist attack in Barcelona. The gist of

Plaintiffs' direct liability claims is that Defendants operated social media platforms that ISIS used to recruit members, raise funds, spread propaganda and promote terror attacks throughout the world. Plaintiffs further claim that ISIS's use of social media led Abouyaaqoub to become "radicalized" and thereafter carried out the Barcelona Attack. The lengthy pleadings, however, are devoid of any facts demonstrating a direct relationship between Defendants' conduct (i.e., hosting ISIS's content) and the attack that killed the Decedent. Plaintiffs' allegations are essentially indistinguishable from those rejected by Fields. See 881 F.3d at 750; accord Clayborn v. Twitter, Inc., No. 17-CV-06894-LB, 2018 WL 6839754, at *7-*8 (N.D. Cal. Dec. 31, 2018) (finding that ISIS' reliance on Twitter to disseminate propaganda, recruit members, connect its members, raise funds, plan and carry out attacks, publicize its exploits, and strike fear in others was insufficient to demonstrate proximate causation under Fields); Gonzalez v. Google, 335 F. Supp. 3d 1156, 1178 (N.D. Cal. 2018) (allegations that Google permitted ISIS and its supporters to use the YouTube platform to disseminate terrorist messages "do not support a finding of proximate causation under the Fields standard.").

Plaintiffs argue that their claim is distinguishable from those at issue in Fields because they aver that "Abouyaaqoub was radicalized by ISIS's use of social media." See FAC ¶ 516; Opp'n at 12. That allegation is entirely conclusory, however. No facts are alleged that ISIS used any particular social media platform—including those operated by Defendants—to direct its members or others to carry out the Barcelona Attack. Nor are any facts alleged that Abouyaaqoub, in fact, personally viewed any of ISIS's materials on-line, let alone that he did so using Defendants' social media platforms. Although ISIS claimed responsibility for the attack after it occurred, courts have rejected the notion that a post-attack claim of responsibility is sufficient to satisfy the direct relationship standard of proximate causation. E.g., Clayborn, 2018 WL 6839754, at *7 (citing cases).

Even if Abouyaaqoub had observed ISIS propaganda on YouTube, Facebook and/or Twitter, *and*, in turn, became inspired to carry out the Barcelona Attack, the nexus between Defendants' conduct and Abouyaaqoub's actions is too attenuated to satisfy the "direct

relationship" standard established in Fields.[3] 881 F.3d at 749 ("Communication services and equipment are highly interconnected with modern economic and social life, such that the provision of these services and equipment to terrorists could be expected to cause ripples of harm to flow far beyond the defendant's misconduct. Nothing in § 2333 indicates that Congress intended to provide a remedy to every person reached by these ripples; instead, Congress intentionally used the 'by reason of' language to limit recovery.").

In sum, the Court finds that Plaintiffs' fact-barren assertion that Abouyaaqoub's radicalization through unspecified social media platforms led to the Barcelona Attack is too conclusory to state a claim for direct liability under the ATA. E.g., Copeland v. Twitter, Inc., 352 F. Supp. 3d 965, 974 (N.D. Cal. 2018) ("The general allegations that Bouhlel was 'radicalized' because of the ISIS content on defendants' sites are no different from the allegations made and rejected by the Ninth Circuit in Fields…."); Taamneh, 343 F. Supp. 3d at 914 (finding claim that an ISIS-affiliated operative was "radicalized by ISIS's use of social media" too conclusory to demonstrate proximate causation under Fields and dismissing ATA direct liability claims with prejudice); Pennie v. Twitter, Inc., 281 F. Supp. 3d 874, 877 (N.D. Cal. 2017) (pre-Fields decision finding allegations that a mass shooter was radicalized after viewing postings by Hamas on the internet and social media sites were conclusory and failed to demonstrate proximate causation under the ATA under the more

[3] Plaintiffs also contend that Fields was wrongly decided. Opp'n at 11. Fields, however, is binding on this Court. Hart v. Massanari, 266 F.3d 1155, 1175 (9th Cir. 2001) ("A district court bound by circuit authority ... has no choice but to follow it, even if convinced that such authority was wrongly decided.").

lenient "substantial factor" test).[4] The Court therefore grants Defendants' motion to dismiss Plaintiffs' primary liability claims (Counts III, IV, VI and VII) under the ATA.

2. Secondary Liability

As originally enacted, the ATA only provided for primary liability claims. In September 2016, however, Congress enacted the JASTA, which expanded the ATA by creating secondary liability for aiding and abetting or conspiring with a person engaging in a terrorist act. Section 2333(d), as amended by JASTA, states as follows:

> (2) **Liability**.—In an action under subsection (a) [of section 2333] *for an injury arising from an act of international terrorism* committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization ..., liability may be asserted as to any person who *aids and abets*, by knowingly providing substantial assistance, or who *conspires with the person who committed such an act of international terrorism*.

18 U.S.C. § 2333(d)(2) (emphasis added). Plaintiffs allege both "aiding and abetting" and "conspiracy" claims, pursuant to section 2333(d)(2).

a) Aiding and Abetting

In enacting JASTA, Congress identified Halberstam v. Welch, 705 F.2d 472 (D.C. Cir. 1983), as providing "the proper legal framework" to analyze aiding and abetting liability. Owens v. BNP Paribas, S.A., 897 F.3d 266, 277 (D.C. Cir. 2018). In Halberstam, the D.C. Circuit stated that: "Aiding-abetting includes the following elements: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) the defendant must *knowingly and*

[4] In the alternative, Defendants argue that they are immune from liability under the Communications Decency Act ("CDA"), 47 U.S.C. § 230(c)(1), which immunizes "Interactive Service Providers" for claims based on third-party content. Mot. at 15-19. Although the district court in Fields ruled that the CDA shielded Twitter from liability, the Ninth Circuit declined to reach the issue, finding the proximate causation issue dispositive. 881 F.3d at 750. In view of the rulings on Plaintiffs' ATA primary liability claims, the Court likewise declines to reach Defendants' alternative argument. See Cain v. Twitter Inc., No. 17-CV-02506-JD, 2018 WL 4657275, at *3 (N.D. Cal. Sept. 24, 2018) ("Because plaintiffs fail to state a claim under the ATA, the Court need not reach Twitter's arguments under the Communications Decency Act, 47 U.S.C. § 230.").

substantially assist the principal violation." 705 F.2d at 477 (emphasis added). Halberstam suggested six factors bearing on "'how much encouragement or assistance is substantial enough' to satisfy the third element: (1) the nature of the act encouraged, (2) the amount of assistance given by defendant, (3) defendant's presence or absence at the time of the tort, (4) defendant's relation to the principal, (5) defendant's state of mind, and (6) the period of defendant's assistance." Linde v. Arab Bank, PLC, 882 F.3d 314, 329 (2d Cir. 2018) (citing Halberstam, 705 F.2d at 483-84).

Focusing on the third element of the Halberstam test for aiding and abetting, Defendants persuasively argue that the FAC does not allege any allegations showing that they provided any encouragement or assistance to Abouyaaqoub, "the person who committed" the Barcelona Attack, see 18 U.S.C. § 2333(d). Although the pleadings describe the attack and aftermath in detail, absent are any facts that Defendants provided him with any type of assistance in planning or carrying out the attack or were present at the incident or had any relationship with Abouyaaqoub. See Halberstam, 705 F.2d at 483-84. The lack of such facts is fatal to Plaintiffs' aiding and abetting claim. See, e.g., Crosby, 303 F. Supp. 3d at 573 (stating that plaintiffs "have not alleged any facts that plausibly suggest that any of the defendants [alleged secondary tortfeasors] 'aided or abetted' the person (Mateen) who committed the night club attack").

Plaintiffs counter that they need only show that Defendants provided substantial assistance to ISIS, and not to Abouyaaqoub specifically. Opp'n at 14-15. As an initial matter, this contention is contrary to the plain language of section 2333(d). Section 2333(d) allows any "national of the United States" to sue for any injury arising from an act of international terrorism committed, planned, or authorized by a designated foreign terrorist organization. 18 U.S.C. § 2333(a), (d)(2). However, liability is imposed only where the defendant has aided and abetted or conspired with "*the person* who committed" the terrorist act. Id. § 2333(d)(2) (emphasis added). Notably, the salient portion of the statute does not state—as Plaintiffs contend—that liability is imposed for merely aiding and abetting or conspiring with a "terrorist organization." See Taamneh, 343 F. Supp. 3d at 916

("Congress chose to refer to aiding/abetting or conspiring with a person who committed 'an act of international terrorism,' not aiding and abetting or conspiring with a foreign terrorist organization.") (citing Linde, 882 F.3d at 329). Had Congress intended to impose liability for aiding and abetting or conspiring with a terrorist organization, it could have stated as such. Toor v. Lynch, 789 F.3d 1055, 1062 (9th Cir. 2015) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (quoting Russello v. United States, 464 U.S. 16, 23 (1983)) (internal quotations omitted).

Moreover, Linde does not, as Plaintiffs suggest, stand for the proposition that merely supporting a terrorist organization is sufficient to state an aiding and abetting claim. Linde recognizes that the *second* element of the Halberstam test for aiding and abetting requires "the secondary actor to be 'aware' that, by assisting the principal, it is itself assuming a 'role' in terrorist activities." 882 F.3d at 329 (citing Halberstam, 705 F.2d at 477). But the secondary actor's "awareness" is distinct from the third element of the Halberstam test, which focuses on the level of "substantial assistance" provided by the secondary actor in connection with the terrorist attack. Id. at 331. As to the *third* element, the Linde court found that the evidence germane to the six Halberstam factors for evaluating substantial assistance were in dispute and could not be resolved on appeal. Id. at 330-31. Notably, the court did not address the issue of whether substantial assistance to the *terrorist organization*, as opposed to the *person* who committed the attack, would suffice to sustain an aiding and abetting claim under the ATA.

In sum, the Court finds that the FAC fails to allege facts sufficient to state a claim for aiding and abetting under section 2333(d)(2). The Court grants Defendants' motion to dismiss Plaintiffs' indirect liability claim for aiding and abetting (Count I).

3. Conspiracy

"The prime distinction between civil conspiracies and aiding-abetting is that a conspiracy involves an agreement to participate in a wrongful activity." Halberstam, 705

F.2d at 478. Defendants move to dismiss Plaintiffs' conspiracy claim on the grounds that no facts are alleged in the FAC to establish the requisite agreement. Plaintiffs do not respond to this argument. As a result, the claim is waived. Jenkins v. Cty. of Riverside, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005). The Court therefore grants Defendants' motion to dismiss Plaintiffs' secondary liability claim for conspiracy (Count II).

B. IEEPA

In Count VII, Plaintiffs allege that Defendants violated the IEEPA, including regulations promulgated thereunder.[5] Plaintiffs allege that, in violation of Executive Order 13224, 31 C.F.R. Part 594 and 50 U.S.C. § 1705, "Defendants knowingly and willfully engaged in transactions with, and provided funds, goods, or services to or for the benefit of, Specially Designated Global Terrorists ... including ISIS, its leaders, and members…." FAC ¶ 561. According to Plaintiffs, Defendants provided "services" to ISIS by allowing it to use their respective social media platforms to conduct terrorist operations. Opp'n at 9.

The IEEPA is a criminal statute that also allows for the imposition of civil penalties. 50 U.S.C. § 1705. Subsection (a) provides that "[i]t shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this chapter." Id. § 1705(a). Under subsection (b), "A civil penalty may be imposed on any person who commits an unlawful act described in subsection (a)." Id. § 1705(b). Finally, subsection (c), "A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act described in subsection (a) shall" be subject to a term of imprisonment and/or fine. Id. § 1705(c).

On September 23, 2001, President George H.W. Bush, acting pursuant to the IEEPA, issued Executive Order 13224, which blocks all property of foreign persons

[5] Defendants characterize Count VII as a primary liability claim under the ATA, presumably because Plaintiffs predicate Defendants' liability on the ATA, 18 U.S.C. § 2333(a). See FAC ¶ 516. Plaintiffs do not dispute this. As such, independent of the reasons for dismissal discussed in this section, Count VII is subject to dismissal based on Plaintiffs' failure to plausibly allege proximate causation under the Fields standard.

designated as a Specially Designated Global Terrorist. See Executive Order 13224, 66 Fed. Reg. 49,079, 49, 079 (Sept. 23, 2001), 2001 WL 34773846. In addition, federal regulations promulgated under Executive Order 13224 and the IEEPA prohibit any "U.S. person [from] engag[ing] in any transaction or dealing in property or interests in property of persons whose property and interests in property are blocked ... including ... [t]he making of any contribution or provision of funds, goods, or *services* by, to, or for the benefit of any person whose property and interests in property are blocked...." 31 C.F.R. § 594.204(a) (emphasis added).

Defendants contend that Plaintiffs' claim under the IEEPA and its implementing regulations fails to sufficiently allege that they acted willfully in providing support to a designated terrorist organization. Mot. at 11. "Willfulness" for purposes of imposing criminal liability under the IEEPA requires a showing that the defendant "knew he was acting unlawfully." United States v. Mousavi, 604 F.3d 1084, 1094 (9th Cir. 2010); see also United States v. Zhi Yong Guo, 634 F.3d 1119, 1123 (9th Cir. 2011) ("To convict Defendant of willfully violating § 1705(a), the government was required to prove beyond a reasonable doubt that … Defendant intended to violate the law…."). No facts are alleged in the FAC suggesting that any Defendant knew it was acting unlawfully.[6]

Plaintiffs counter that IEEPA does not require that Defendants had actual knowledge that ISIS was using their sites to conduct terrorist activities; rather, it is enough, they claim, to allege that they were "willfully blind" to ISIS's activities. Opp'n at 8. However, Plaintiffs fail to cite any authority holding that willful blindness is sufficient for purposes of establishing a criminal violation of the IEEPA. Moreover, Plaintiffs' contention is contrary

[6] Although the parties concur that willfulness is required to sustain Count VII, it bears noting that the IEEPA permits the imposition of a civil penalty, which does not require a showing of willfulness. See 50 U.S.C. § 1705(b). However, the FAC relies on Defendants' alleged criminal violation of IEEPA and its implementing regulations as the foundation for the recovery of damages under the ATA. See FAC ¶ 563 ("Defendants are liable pursuant to 18 U.S.C. § 2333(a) for any and all damages…."); see also Opp'n at 8 (acknowledging that a criminal violation under the IEEPA is the equivalent to a violation of the ATA, 18 U.S.C § 2339B). For that reason, a showing of willfulness is required in this instance.

to the Ninth Circuit's holdings in Mousavi and Zhi Yong Guo. The Court therefore grants Defendants' motion to dismiss Plaintiffs' claim under the IEEPA (Count VII).

C. STATE LAW CAUSES OF ACTION

Plaintiffs' remaining claims are two state law causes of action for wrongful death and NIED. Under California law, the elements of a wrongful death cause of action are "(1) a 'wrongful act or neglect' on the part of one or more persons that (2) 'cause[s]' (3) the 'death of [another] person.'" Norgart v. Upjohn Co., 21 Cal. 4th 383, 390 (1999) (citing Cal. Code Civ. Proc. § 377.60). NIED is not an independent claim, but is simply a claim of negligence, the elements of which are duty, breach, causation and damages. Burgess v. Superior Court, 2 Cal. 4th 1064, 1072 (1992). In terms of causation, a plaintiff bringing a wrongful death or negligence claim must demonstrate that the defendant's conduct was a substantial factor in bringing about the injury or death. See, e.g., Rutherford v. Owens-Illinois, Inc., 16 Cal. 4th 953, 968 (1997).

Defendants do not expressly address whether the facts alleged suffice to state a claim for wrongful death or negligence. Instead, they contend that because the FAC fails to plausibly allege proximate causation as to Plaintiffs' federal primary liability ATA claims, the claims for wrongful death and negligence must fail as well. However, in Fields, the Ninth Circuit rejected the substantial factor standard of causation in favor of the more stringent direct relationship standard. 881 F.3d at 744. Given that Plaintiffs' state law claims are subject to a less stringent showing of causation, it does not logically follow that the Court's analysis of Plaintiffs' ATA primary liability claims controls the outcome of their state law claims. Tellingly, Defendants fail to meaningfully address this distinction in their motion. Given the absence of such analysis, the Court therefore declines to dismiss Plaintiffs' causes of action for wrongful death and NIED for failure to state a claim. See Hibbs v. Dep't of Human Res., 273 F.3d 844, 873 n. 34 (9th Cir. 2001) (finding argument too undeveloped to be capable of assessment).

The above notwithstanding, the Court need not proceed further with the Plaintiffs' wrongful death and NIED claims. A district court may decline to exercise supplemental

jurisdiction over state law claims if it has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3); Sanford v. MemberWorks, Inc., 625 F.3d 550, 561 (9th Cir. 2010). "'[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.'" Sanford, 625 F.3d at 561 (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988), superseded on other grounds by statute as recognized in Fent v. Okla. Water Res. Bd., 235 F.3d 553, 557 (10th Cir. 2000)). Having now dismissed all federal claims alleged against Defendants, the Court declines to assert supplemental jurisdiction over Plaintiffs' remaining claims. See City of Colton v. Am. Promotional Events, Inc.-West, 614 F.3d 998, 1008 (9th Cir. 2010) (holding that district court acted within its discretion in declining to exercise supplemental jurisdiction after granting summary judgment on all federal claims).

IV. CONCLUSION

For the reasons stated above,

IT IS HEREBY ORDERED THAT Defendants' motion to dismiss is GRANTED as to all federal claims alleged in the FAC. Because Plaintiffs have failed to identify any facts that could cure the deficiencies discussed above, these claims are dismissed without leave to amend. The Court declines to assert supplemental jurisdiction over Plaintiffs' wrongful death and NIED claims, which are dismissed without prejudice. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: 3/20/19

Saundra B Armstrong

SAUNDRA BROWN ARMSTRONG
Senior United States District Judge